Filed 5/17/10 P. .v McDonald CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JEFFREY STEVEN MCDONALD, Defendant and Appellant.	E047905 (Super.Ct.No. FVI800756) OPINION

APPEAL from the Superior Court of San Bernardino County. Margaret A. Powers, Judge. Affirmed as modified.

Eleanor M. Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Scott C. Taylor, and Marissa Bejarano, Deputy Attorneys General, for Plaintiff and Respondent.

On October 9, 2008, the San Bernardino District Attorney filed an information charging defendant and appellant Jeffrey Steven McDonald with (1) possession for sale of a controlled substance, in violation of Health and Safety Code section 11378 (count 1); and (2) transportation of a controlled substance, in violation of Health and Safety Code section 11379, subdivision (a) (count 2). The information also alleged that defendant had previously been convicted of possession for sale and transportation of a controlled substance within the meaning of Health and Safety Code section 11370.2, subdivision (c), and that defendant had served two prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).[1]

On March 13, 2009, defendant pled guilty to possession for sale of a controlled substance (count 1), and admitted that he had previously been convicted of possession for sale. That same day, the trial court sentenced defendant to six years in prison—three years for the possession for sale offense, and three years for the prior conviction.

On appeal, defendant contends that the trial court erred in (1) denying his motion to suppress evidence under section 1538.5, and (2) imposing $50 in court security fees. In a supplemental brief, defendant added the contention that he is entitled to a recalculation of his presentence work and conduct credits under the recent amendment of section 4019. We agree with defendant that the court erred in imposing $50 in court security fees. In all other respects, the judgment is affirmed.

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[1] All further statutory references will be to the Penal Code unless otherwise indicated.

I

FACTUAL AND PROCEDURAL HISTORY[2]

On April 1, 2008, about 5:48 p.m., Deputy John Holland initiated a traffic stop. After making contact with defendant, the driver, Deputy Holland searched defendant and the vehicle. The deputy found 25.51 grams of methamphetamine and $3,800 in cash on defendant's person. In the vehicle, the deputy found a large roll of plastic baggies. Based on Deputy Holland's training and experience, he opined that defendant possessed the methamphetamine for sale.

II

ANALYSIS

A. The Trial Court Properly Denied Defendant's Motion to Suppress

Defendant contends that the trial court erred in denying his motion to suppress evidence under section 1538.5 because Deputy Holland lacked reasonable suspicion to initiate a traffic stop. We disagree.

1. Procedural Background

On December 5, 2008, defendant filed a motion to suppress evidence under section 1538.5. On January 16, 2009, a hearing was held on the motion. Deputy Holland was the sole witness called at the hearing.

[2] Because defendant pled guilty prior to trial, the facts are derived from the evidence presented at the preliminary hearing.

Deputy Holland testified that on April 1, 2008, around 5:48 p.m., he was on patrol in the area of Nisqually Road in Apple Valley, when he received information about possible drug activity at an apartment complex. The deputy was familiar with the reported area; he had numerous contacts with people at the apartment complex regarding numerous narcotic violations. While Deputy Holland was south of the apartment complex in an alleyway, he observed a car with tinted windows pull into the complex. As the car pulled into the complex, the driver of the vehicle—later identified as defendant—looked at Deputy Holland, "opened his eyes real big, put the vehicle in reverse, backed out, and went the way he was coming from heading eastbound." The deputy then initiated a traffic stop based on the suspicious activity of the driver and the tinted windows. About 45 seconds later, defendant pulled over. When the deputy made contact with defendant, defendant informed the deputy that he was on parole; the deputy then searched defendant and his vehicle.

Based on the evidence, defense counsel argued that the motion to suppress should be granted because the deputy testified that he could see through defendant's windows—which established that the front windows were not tinted in violation of the Vehicle Code. In addition, defense counsel argued that the stop was based on the officer's "hunch," not reasonable suspicion.

The prosecutor argued that the officer made the stop, partly, because he believed the windows of defendant's car were tinted. However, the deputy also made the stop

based on the reported narcotic activity and based on defendant's reaction after he saw the deputy.

The court stated that, in this case, "the combination of things does add up to enough reasonable suspicion for a stop." The court noted that although it appeared that you could see through the front windows of defendant's car, it was hard to reproduce exact conditions, and based on the officer's observations at the time and place, it was reasonable for the deputy to conclude that the windows were illegally tinted. The court next noted that just because the area was known for crime was not enough, "but [defendant's] actions, along with the known activity in the area . . . those things combined would give enough reasonable suspicion for the stop." The court concluded that "I think the combination of the tinted windows and the suspicious activity . . . does add up." The court then denied defendant's motion to suppress evidence.

2. Standard of Review

In reviewing the trial court's denial of defendant's motion to suppress, "[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) "'[A]ll factual conflicts must be resolved in the manner most favorable to the [superior] court's disposition on the [suppression] motion.' [Citation.]" (*People v. Woods* (1999) 21 Cal.4th 668, 673-674.) "In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser, supra,* at p. 362.)

The Fourth Amendment to the United States Constitution prohibits seizures of persons, including brief investigative detentions, when they are "'unreasonable.'" (*People v. Souza* (1994) 9 Cal.4th 224, 229.) In order to pass constitutional muster, a detention must be "based on 'some objective manifestation' that criminal activity is afoot and that the person to be stopped is engaged in that activity." (*Id*. at p. 230.) Thus, as specific to a vehicle stop, "a police officer can legally stop a motorist *only* if the facts and circumstances known to the officer support at least a reasonable suspicion that the driver has violated the Vehicle Code or some other law." (*People v. Miranda* (1993) 17 Cal.App.4th 917, 926.)

3. Reasonable Suspicion

We begin by addressing defendant's argument that no reasonable officer could have believed defendant was engaged in criminal activity.

"To justify an investigative stop or detention, the circumstances known or apparent to the officer must include specific and articulable facts which, viewed objectively, would cause a reasonable officer to suspect that (1) some activity relating to [a] crime has taken place or is occurring or about to occur, and (2) the person the officer intends to stop or detain is involved in that activity. [Citations.] This reasonable suspicion requirement is measured by an objective standard, not by the particular officer's subjective state of mind at the time of the stop or detention. [Citations.] Accordingly, the circumstances known or apparent to the officer must be such as would cause a reasonable law enforcement officer in a like position, drawing when appropriate

on his or her training and experience, to suspect that criminal activity has occurred, is occurring, or is about to occur and that the person to be stopped or detained is involved in the activity. [Citations.] The corollary to this rule is that an investigative stop or detention predicated on circumstances which, when viewed objectively, support a mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in good faith. [Citation.]" (*People v. Conway* (1994) 25 Cal.App.4th 385, 388-389.)

Because the concept of reasonable suspicion is sometimes elusive, we reiterate the rules applicable to this case. "In evaluating the validity of a stop . . . [a reviewing court] must consider 'the totality of the circumstances—the whole picture.' [Citation.] As [stated] in [*United States v. Cortez* (1981) 449 U.S. 411, 417]: [¶] 'The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same—and so are law enforcement officers' [Citation.]" (*United States v. Sokolow* (1989) 490 U.S. 1, 8.)

The specific and articulable facts and circumstances known to Deputy Holland at the time of the stop were that defendant was in an area known to be frequented by those involved in narcotics; defendant drove into an apartment complex believed to be connected to drug activity; and when defendant saw the deputy, defendant's eyes got big, and then he reversed his car, backed out of the driveway, and drove away.

Under the totality of the circumstances, we conclude that Deputy Holland knew facts which, viewed objectively, would cause a reasonable officer to suspect that criminal activity was afoot so as to justify detaining.

Notwithstanding, defendant contends that the trial court erred in denying the motion to suppress because, in addition to the above, the trial court denied the motion based also on defendant's tinted windows. The People agree that it was error to deny the motion based on the tinted windows. The People, however, argue that the error does not require a reversal because the other factors relied upon by the court are sufficient to support the court's denial of the suppression motion. We agree. Our role is to "view the record in the light most favorable to the trial court's ruling, deferring to those express or implied findings of fact that are supported by substantial evidence," while independently reviewing "the trial court's application of the law to the facts." (*People v. Jenkins* (2000) 22 Cal.4th 900, 969.) As provided above, the trial court's application of the law to the facts was proper. Defendant's suspicious activity in an area known for narcotics activity gave Deputy Holland reasonable suspicion to detain defendant. Therefore, the fact that a separate and independent basis—tinted windows—was an improper reason to deny the suppression motion is irrelevant.

In his reply brief, defendant argues that the trial court's ruling on the motion should be reversed because of Deputy "Holland's blatant dishonesty . . . ." On appeal, however, assessing a witness's credibility is limited. "In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts.

[Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) "'Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' [Citation.]" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1141, overruled on another ground in *People v. Rundle* (2008) 43 Cal.4th 76, 151.)

Here, there were inconsistencies in Deputy Holland's testimony. The court, however, acknowledged these inconsistencies and decided that the deputy was credible. At the end of the hearing on the motion to suppress, the trial court noted that under the totality of the circumstances, as described above, there was substantial evidence to initiate a traffic stop.

Based on the above, we hold that the trial court properly denied defendant's motion to suppress evidence.

B. The Trial Court Erred in Imposing Additional Security Fees

Defendant claims that the trial court erred in imposing $50 in court security fees because the trial court may only impose a $20 security fee for each conviction. Here, defendant argues that because he was only convicted of one count, the court could not impose more than $20 in security fees. The People agree with defendant.

Section 1465.8 provides "[t]o ensure and maintain adequate funding for court security, a fee of twenty dollars ($20) shall be imposed on every conviction for a criminal offense . . . ." Thus, for example, where a defendant pleads guilty to nine offenses, the court must impose nine separate $20 court security fees under section 1465.8. (*People v. Schoeb* (2005) 132 Cal.App.4th 861, 866-867.)

In this case, defendant pled guilty to one count of possessing a controlled substance for sale. At sentencing, the trial court ordered defendant to pay a "Court security fee of $50." The abstract of judgment sates that the $50 assessment was imposed for "security surcharge and criminal assessment." Under section 1465.8, however, the trial court could only impose a $20 court security fee for the single conviction against defendant.

Therefore, the judgment is hereby modified to impose a $20 court security fee, and the $50 court security fee is ordered stricken.

C. Defendant Is Not Entitled to Additional Credits

Defendant was sentenced on March 13, 2009 to a six-year term in state prison. At the time of sentencing the trial court determined defendant's presentence credits to be 324 days of actual custody and 162 days of conduct credit, for a total of 486 days. In his supplemental brief, defendant contends that he is entitled to an additional 162 days of credit under the amended version of section 4019, which went into effect on January 25, 2010. Defendant argues that the 2010 amendment is retroactive, i.e., it applies to persons

who were sentenced *before* the amendment's effective date but, whose cases are not final as of that date.

Under section 2900.5, a person sentenced to state prison for criminal conduct is entitled to credit against the term of imprisonment for all days spent in custody before sentencing. (§ 2900.5, subd. (a).) In addition, section 4019 provides that a criminal defendant may earn additional presentence credit against his or her sentence for willingness to perform assigned labor (§ 4019, subd. (b)) and compliance with rules and regulations (§ 4019, subd. (c)).

When defendant was sentenced in March of last year, under the version of section 4019 then in effect, conduct credit could be accrued at the rate of two days for every four days of actual presentence custody. (Former § 4019.) However, in October 2009, the California Legislature passed Senate Bill No. 3X 18 (2009–2010 Ex. Sess.). Among other things, Senate Bill No. 3X 18 revised the accrual rate for conduct credits under section 4019. Under the former version of section 4019, defendants earned two days of conduct credit for every four actual days served in local custody. Under the new provision, "any person who is not required to register as a sex offender and is not being committed to prison for, or has not suffered a prior conviction of, a serious felony as defined in section 1192.7 or a violent felony as defined in section 667.5, subdivision (c), may accrue conduct credit at the rate of four days for every four days of presentence custody." (*People v. Rodriguez* (2010) 182 Cal.App.4th 535, 539-540 (*Rodriguez*).)

The issue, whether the amended version of section 4019 applies prospectively from January 25, 2010, or retroactively to all cases not yet final, has divided the Courts of Appeal. The Fifth District held in *Rodriguez* that the amendment was *not* retroactive. (*Rodriguez, supra*, 182 Cal.App.4th at pp. 544-545.) The Third District held in *People v. Brown* (2010) 182 Cal.App.4th 1354, 1365 (*Brown*) that the amendment was retroactive. Division Two of the First District agreed with the Third District in *People v. Landon* (2010) 183 Cal.App.4th 1096, 1106 (*Landon*). In *People v. House* (2010) 183 Cal.App.4th 1049, 1057 (*House*) Division One of the Second District also agreed with the Third District. In *People v. Delgado* (Apr. 29, 2010, B213271) ___ Cal.App.4th ___ [2010 Cal.App. Lexis 600, *22] (*Delgado*) Division Six of the Second District sided with the Third District as well. In a recently published opinion, *People v. Otubuah* (Apr. 7, 2010, E047271) ___ Cal.App.4th ___ [2010 Cal.App. Lexis 622, *16], we agreed with the Fifth District in *Rodriguez, supra*, 182 Cal.App.4th 535, and held that the amendment to section 4019 was not retroactive.

The amendment of section 4019 occurred in section 50 of Senate Bill No. 3X 18. That bill ended with section 62, which stated that the "act addresses the fiscal emergency declared by the Governor. . . ." (Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 62.) "[T]he 2010 amendment to section 4019 contains no saving clause." (*Rodriguez, supra*, 182 Cal.App.4th at p. 541.)

As an amendment to the Penal Code, the amendment of section 4019 "'is generally presumed to operate prospectively absent an express declaration of retroactivity

or a clear and compelling implication that the Legislature intended otherwise. [Citation.]' [Citation.]" (*People v. Alford* (2007) 42 Cal.4th 749, 753; see also § 3 ["No part of [the Penal Code] is retroactive, unless expressly so declared"]; *In re E.J.* (2010) 47 Cal.4th 1258, 1272 ["'[S]ection 3 reflects the common understanding that legislative provisions are presumed to operate prospectively, and that they should be so interpreted "unless express language or clear and unavoidable implication negatives the presumption." [Citation.]' [Citation.] '[I]n the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application'"].) However, "[w]here the Legislature has not set forth in so many words what it intended, the rule of construction should not be followed blindly in complete disregard of factors that may give a clue to the legislative intent. It is to be applied only after, considering all pertinent factors, it is determined that it is impossible to ascertain the legislative intent." (*In re Estrada* (1965) 63 Cal.2d 740, 746 (*Estrada*).) Thus, "where the amendatory statute mitigates punishment and there is no saving clause, the rule is that the amendment will operate retroactively so that the lighter punishment is imposed." (*Id.* at p. 748.)

In *People v. Doganiere* (1978) 86 Cal.App.3d 237, 240 [Fourth Dist., Div. Two] (*Doganiere*) we held, on the basis of *Estrada*, that amendments to section 2900.5 to provide credit for section 4019 conduct credits were retroactive. (See also *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [amendment to section 2900.5 to credit probation jail time to sentence, when probation is revoked, is retroactive] (*Hunter*).) This was

based upon the conclusion that there is no legal significance between lessening the maximum sentence for a crime and increasing presentence credits, because both mitigate punishment. (See *House, supra,* 183 Cal.App.4th at p. 1057; *Hunter*, at p. 393.)

The majority opinions have all relied on *Estrada* and the mitigating effect of increasing the rate at which custody credits are earned to find that the amendment of section 4019 was retroactive. (See, e.g., *Brown*, *supra*, 182 Cal.App.4th at pp. 1363-1364; *House*, *supra*, 183 Cal.App.4th at p. 1057; *Landon*, *supra*, 183 Cal.App.4th at p. 1108.)

In *People v. Nasalga* (1996) 12 Cal.4th 784, 797-798 (*Nasalga*) our Supreme Court applied *Estrada* to an amendment increasing the threshold amount for a sentence enhancement. The court's analysis stated, "The rule in *Estrada* has been applied to statutes governing penalty enhancements, as well as to statutes governing substantive offenses. [Citations.] Of particular relevance, courts have held that amendments . . . that mitigate punishment by increasing the dollar amount for certain crimes or enhancements, should be applied retroactively, in the absence of a saving clause or other indicia of a contrary legislative intent. [Citations.]" (*Id.* at pp. 792–793, fn. omitted.) In a footnote, the *Nasalga* court referenced the dissent in a prior case "for a comprehensive list of cases that have applied *Estrada*." (*Id.* at p. 793, fn. 8.) The comprehensive list does not cite *Doganiere* or *Hunter,* and while citing the multiplicity of circumstances in which *Estrada* has been applied, none of the listed cases is described as involving an amendment to the custody credit scheme. (*In re Pedro T.* (1994) 8 Cal.4th 1041, 1055, fn. 3.)

In *In re Kapperman* (1974) 11 Cal.3d 542, 544, our Supreme Court reviewed an equal protection challenge to the prospective-only granting of credit for actual time served prior to the commencement of a prison sentence. The court held that equal protection was violated, but stated that "this case is not governed by cases (e.g., [*Estrada*]) involving the application to previously convicted offenders of statutes lessening the *punishment* for a particular offense." (*Id*. at p. 546.)

Despite numerous cases applying *Estrada*, our Supreme Court has never cited either *Doganiere* or *Hunter*, and has never stated that increases to the custody credit scheme are a mitigation of punishment. Instead, our Supreme Court has been consistent in describing the custody credit scheme as a means of encouraging and rewarding behavior. (*People v. Brown* (2004) 33 Cal.4th 382, 405 ["section 4019, focuses primarily on encouraging minimal cooperation and good behavior by persons temporarily detained in local custody"]; *People v. Sage* (1980) 26 Cal.3d 498, 510 ["The purpose of conduct credit is to foster good behavior and satisfactory work performance. [Citation.] That purpose will not be served by granting such credit retroactively."] (conc. & dis. opn. of Clark, J.); *People v. Saffell* (1979) 25 Cal.3d 223, 233 ["The purposes of the provision for 'good time' credits seem self-evident. First, and primarily, prisoners are encouraged to conform to prison regulations and to refrain from engaging in criminal, particularly assaultive, acts while in custody. Second, [prisoners are induced] to make an effort to participate in what may be termed 'rehabilitative' activities."].) Thus, we conclude that increases in custody credits should not be considered a mitigation in punishment.

Accordingly, the reasoning underlying our decision in *Doganiere* was flawed, as is the reasoning underlying *Hunter, Landon, House, Brown* and *Delgado*. Instead, because the custody credit scheme and, in particular, conduct credits are incentives or rewards for good behavior, increasing the rate at which credits are accrued does not represent a determination that a prior punishment was too severe. (See *Rodriguez*, *supra*, 182 Cal.App.4th at p. 543 ["it cannot be said that the punishment-reducing amendment at issue here 'obviously' evinces a legislative determination that sentences for some felons are too severe, or that the Legislature intended a reduction in sentence for some felons should be extended to all to whom it lawfully can be extended"].) Thus, *Estrada* does not apply, and there is no presumption of retroactivity. (See *In re Kapperman*, *supra*, 11 Cal.3d at p. 546.)

Senate Bill No. 3X 18 is explicit that it is intended to address a declared fiscal emergency. (Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 62.) However, the purpose of an amendment is not necessarily indicative of a legislative intent for or against retroactivity. (See *Nasalga*, *supra*, 12 Cal.4th at p. 795 [increasing threshold amounts to address inflation only indicates consideration of decline of dollar and does not indicate intent for prospective application].) Thus, while applying the increased conduct credits retroactively would reduce prison populations and conserve financial resources more quickly than a prospective only amendment, the Legislature could also have determined that a prospective application better balanced public safety concerns and the need to conserve financial resources by reducing the prison population. (See *Rodriguez*, *supra*,

182 Cal.App.4th at pp. 542-543 [prospective amendment could reflect "proper balance between the state's fiscal concerns and its public safety concerns"].)

Similarly, our consideration of the operation of section 4019 also does not illuminate a legislative intent on the retroactivity issue. This is because section 4019 is a means of incentivizing and rewarding good behavior, but the Legislature may have concerned itself only with the fiscal effect of granting increased conduct credits, without consideration for the fact that recipients of retroactive credits were necessarily not responding to, or even aware of, the increased rate at which they were earning conduct credits. (See *In re Stinnette* (1979) 94 Cal.App.3d 800, 806 ["it is impossible to influence behavior after it has occurred"]; *Rodriguez*, *supra*, 182 Cal.App.4th at p. 542.)

The courts finding the amendment of section 4019 to be retroactive have inferred legislative intent for retroactivity of the amendment to section 4019 from section 59 of Senate Bill No. 3X 18, which acknowledges and addresses the likelihood of delays in implementation by the Department of Corrections and Rehabilitation. (Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 59.) However, Senate Bill No. 3X 18 was changing not just presentence credits but also a multitude of postsentence credits. Thus, while the administrative burden on the Department of Corrections and Rehabilitation to implement the new credits would be higher if increased credits are applied retroactively, the burden would remain high even if all the increases, including section 4019, were applied prospectively. Accordingly, we infer no intent for retroactivity of the amendment of section 4019 from section 59 of Senate Bill No. 3X 18.

We are also mindful of other potential indicators of intent. For instance, Senate Bill No. 3X 18 was neither effective immediately as urgency legislation, nor was the effective date of operation delayed. (See *Rankin v. Longs Drug Stores California, Inc.* (2009) 169 Cal.App.4th 1246, 1257-1258 [discussing weak inference for prospective application from delayed effective date].) The Legislature has also responded to undo the amendment of section 4019. To date, the Senate has unanimously passed its urgency legislation undoing the amendment of section 4019, and the Assembly's mirror version is in committee. (Sen. Bill No. 1487 (2009-2010 Reg. Sess.); Assem. Bill No. 1395 (2009-2010 Reg. Sess.).)

Having searched for a legislative intent regarding prospective or retroactive application, we agree with the Fifth District that "there is no '"clear and compelling implication"' [citation] that the Legislature intended the amendatory statute at issue to apply retroactively. Accordingly, the section 3 presumption is not rebutted." (*Rodriguez, supra*, 182 Cal.App.4th at p. 544; see also *In re E.J., supra*, 47 Cal.4th at p. 1272 ["'[I]n the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application'"].) Thus, the amendment to section 4019 applies prospectively and defendant is not entitled to an increase in his custody credits.

III

DISPOSITION

The judgment is hereby modified by striking the $50 court security fee and imposing a $20 court security fee pursuant to section 1465.8. As modified, the judgment is affirmed. The abstract of judgment should be amended to reflect this modification. The trial court is directed to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ McKinster
J.

We concur:

/s/ Ramirez
P.J.

/s/ Richli
J.